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Supreme Court of the United States

No. 390

SEABOARD AIR LINE RAILROAD COMPANY,
APPELLANT,

versus

JOHN M. DANIEL, AS ATTORNEY GENERAL OF THE STATE OF
SOUTH CAROLINA; AND W. P. BLACKWELL, AS SECRE-
TARY OF THE STATE OF SOUTH CAROLINA, APPELLEES.

APPEAL FROM THE SUPREME COURT OF THE STATE OF SOUTH
CAROLINA

SUPPLEMENTAL STATEMENT BY APPELLEES
(In Response to Request from the Court)

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STATEMENT AS TO BENEFITS AND ADVANTAGES (In Response to Request from the Court)

To the Honorable Supreme Court of the United States:

In response to the request from this Court as to a statement of the benefits and advantages to the State of South Carolina and its citizens from the South Carolina constitution.

tional and statutory requirement that railroad corporations be chartered under the laws of the State of South Carolina, counsel for the appellees respectfully submit:

The benefits and advantages to the State of South Carolina, and its citizens, from the requirement involved, largely flow from the constitutional and statutory provisions regulating corporations, and from the decisions construing such provisions. For the convenience of this Court, we are attaching hereto as an Appendix, the paragraph headings of the principal provisions of the Constitution and the Code, from which this Court can see the many benefits and advantages which accrue to the State of South Carolina from the requirement that all railroad corporations be chartered under the laws of the State of South Carolina.

Said statutory provisions are embodied in:

Chapter 153, entitled "PRIVATE CORPORATIONS", which is subdivided into: Article 1, "General Provisions" (see Sections 7676-7725); Article 2, "Business Corporations" (see Sections 7726-7756); Article 3, "Merger and Consolidation of Corporations" (see Sections 7757-7763);

Chapter 154, entitled "FOREIGN CORPORATIONS", (see Sections 7764-7790);

Chapter 156, entitled "RAILROAD, STEAMBOAT AND CANAL COMPANIES" (see Sections 8179-8198);

Chapter 160, entitled "GENERAL RAILROAD LAW", which is divided into: Article 1, "General Provisions" (see Sections 8254-8275); Article 2, "Incorporation and Operation by Purchaser of Railroad" (see Sections 8276-8284); Article 3, "Consolidation and Aiding of Other Companies" (see Sections 8285-8292.5); Article 4 (Jurisdiction of The Public Service Commission" (see Sections 8292-11-8292-27); Article 5, "Rates, Charges and Regula-

tions" (see Sections 8293-8349); Article 6, "Safety Appliances and Liability for Injuries and Damages" (see Sections 8350-8394); Article 7, "Carriage of Passengers and Goods", (see Sections 8395-8428; Article 8, "Crossings and Cattle Guards" (see Sections 8429-8436); Article 9, "Rights of Way" (see Sections 8437-8450); Article 10 (Penalties and Forfeitures" (see Sections 8451-8461);

Chapter 160-A, entitled "Grade Crossings and Grade Separation Structures Across Railroad Tracks" (see Sections 8462-8478);

South Carolina Code of Civil Procedure (see Section 434), "Summons—Service"; (see Section 527) "Property of foreign corporations, and of non-resident, absconding, or concealed defendants, may be attached".

State Constitution of 1895, Article IX, entitled "CORPORATIONS" (see Sections 1-21).

We respectfully invite this Honorable Court's attention to the paragraph headings of said sections contained in the said Appendix hereto attached.

The said benefits and advantages are too numerous to discuss in detail, but may be classified into the following classes:

I

GREATER FACILITY OF CONTROL AND REGULATION

In this connection, we call particular attention to the following sections of

Chapter 132, Sections 8173, 8186, 8194, 8195, 8197-1;

Chapter 160, Sections 8256, 8263, 8264, 8268, 8272, 8276, 8277, 8285, 8289, 8292, 8292-3, 8292-12, 8292-13, 8292-

20, 8292-27, 8300, 8304, 8308, 8313, 8314, 8326, 8339, 8341, 8342, 8356, 8374-2, 8375, 8380, 8387, 8395, 8396, 8401, 8405, 8415, 8418, 8427, 8430, 8438, 8440, 8444, 8447, 8450, 8455, 8461, 8462.

We particularly call attention to the provisions of Section 8292, entitled "Annual reports of railroads—blanks—defective reports—transmitting report to Governor"; and Section 8292-27, entitled "Investigation of books and papers—agents and employees—delegation of powers—penalties". In this connection we desire to say that as counsel for the State of South Carolina, we have had considerable experience in investigating the rights and in the regulation of public utilities, and we are satisfied that the State of South Carolina enjoys much better advantages for the purpose of regulation if the corporation is chartered under the laws of the State of South Carolina.

Also, we call attention to Section 8341, entitled, "Mandamus to require compliance—punishment for disobedience—costs and counsel fees." This section in effect provides a remedy whereby railroad corporations chartered in this state can be required to comply with their statutory and charter duties and allows the parties instituting suit to recover their costs, including counsel fees. (see *State of South Carolina v. Broad River Power Company*, 164 S. C., 208). Also, along this line we call attention to the provisions of Section 7676 of the Code entitled "All charters subject to amendment or repeal", to the effect that "it shall be deemed part of the charter of every corporation created under the provisions of any general law * * * that such charter and every amendment and renewal thereof shall always remain subject to amendment, alteration or repeal by the General Assembly."

II

STATE CONTROL OF THE INTERNAL ORGANIZATION AND MANAGEMENT OF THE CORPORATION

Among the advantages to the State of South Carolina is that the State and its citizens will have the right to control the internal organization and management of the corporation, as provided by the Code. This gives the State of South Carolina and such of its citizens as may wish to become stockholders of the railroad corporations operating in this State the right to have some say-so as to the methods and procedure by which such corporations may be organized, operated and/or dissolved. In this connection we call particular attention to the following Sections of Chapter 153, entitled "PRIVATE CORPORATIONS": 7680, 7690, 7692, 7697, 7699, 7700, 7704, 7709, 7710, 7711, 7724-1, 7724-2, 7724-3, 7738, 7739, 7750, 7751, 7757.

In this connection we call attention to the provisions of Section 7790 to the effect that no corporation controlled by aliens can own more than 500 acres of land in this state.

III

RIGHT OF CONDEMNATION WITH CORRELATIVE RIGHT OF JUST COMPENSATION

Also important in this connection is the right of railroad corporations, chartered under the laws of this State, to condemn land for railroad purposes, coupled with the corresponding obligation of the corporations to make just compensation to the land owners whose lands are so taken. See particularly on this point Sections 8438, 8440, 8444, 8447, 8450 of Chapter 160 of the South Carolina Code of 1942.

It is submitted that the right of condemnation which is a valuable right to a railroad corporation as a public service corporation should be correlative to the obligation of such corporations to take out a charter under the South Carolina laws and be correspondingly amenable both to the laws of the State regulating internal management and the laws of the State designed to promote better regulation.

IV

FREEDOM FROM ATTACHMENT

Also, among the benefits and advantages is that any domestic corporation, including a domestic railroad corporation, is exempt from the provisions of the Code of Civil Procedure, providing in effect that the property of all foreign corporations in this State is subject to attachment as a basis for service of process and jurisdiction of the Courts of the State (see S. C. Code of 1942, Section 527). The benefit of this exemption is not available to a corporation which has merely filed domestication papers (see *Pelzer Mfg. Co. v. Pitts*, 76 S. C. 349, 57 S. E. 29; see, however, *Whitfield v. Hovey*, 30 S. C. 117, 8 S. E. 840).

This is a benefit both to the corporation and also to the State of South Carolina and its citizens, insofar as it tends to facilitate the operations of the company as a public service corporation.

V

GREATER FEES TO THE STATE OF SOUTH CAROLINA

In this connection it also may be mentioned, though we do not consider this one of the major benefits and advantages, that the fees provided for the State of South Carolina to be paid by corporations taking out South Carolina

charters are greater (see Sections 7690, 7738) than the fees provided for foreign corporations merely filing the stipulations and taking out domestication papers. (see Sections 7765, 7767).

OTHER CONSIDERATIONS

In this connection also it is to be noted that while the right of railroad corporations to make mortgages of their property, is expressly recognized by the South Carolina Code (Section 8282), it is further provided that the purchasers of such railroads under such mortgages or deeds of trust may form a corporation (Section 8276) and must reorganize and continue to operate the railroad (Section 8278).

It is submitted therefore that concomitant with the advantages initially granted to the railroads operating in the State of South Carolina was the obligation which should be treated as a part of its charter (Section 7476) that in case of a sale of its assets under mortgage, the purchaser should reorganize as a South Carolina corporation.

Also, it is to be noted that the South Carolina requirement that railroads be organized under the laws of the State of South Carolina does not amount to a deprivation of the company's right of removal to the Federal Courts as a foreign corporation, but on the contrary, the requirement and provision for the consolidation of a foreign corporation with a domestic corporation amounts merely to an adoption of such railroad corporation and does not prevent its right of removal (see *Calvert v. Southern Ry. Co.*, 64 S. C., 139, 36 S. E., 750; *Wilson v. Southern Railway Co.*, 64 S. C., 162, 41 S. E., 971).

In this connection also, we call attention to the fact that it was alleged in the Answer filed by the appellees in this case that the company is engaged in both intrastate and interstate operations and that if relief prayed for by it was

granted, the State and its citizens would be "denied many of the rights and privileges" to which they are entitled and that "the best interest of the State of South Carolina and its citizens will be served" by requiring the appellant to comply with the South Carolina statutory and constitutional provisions (see Tr., pp. 114-145), which allegations were admitted by appellant's demurrer. The South Carolina Supreme Court has upheld the position of appellees in this case, and it is submitted that there is certainly sufficient justification for the State courts finding on this point so that this Court will not review such finding (see *Broad River Power Company v. South Carolina*, 282 U. S., 187, 75 L. Ed., 287).

Also, we call attention to the fact that many of the foregoing benefits and advantages to the State of South Carolina and its citizens flowing from the regulations listed, even though they affect interstate commerce, are such that they will be recognized and enforced by this Honorable Court (see *S. C. Highway Department v. Barnwell Brothers*, 82 L. Ed., 734; and see particularly the many cases cited in the report of the above case in 82 L. Ed., Pp. 740-741, on this point).

It is unthinkable to us that a question of such gravity and importance as that here involved should be determinable by a federal commission such as the Interstate Commerce Commission in a proceeding such as that considered in this case.

Respectfully submitted,

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